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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Rulemaking for the Purposes of Revising General
Order 96-A Regarding Informal Filings at the
Commission.

R. 98-07-038
(Filed July 23, 1998)

**OPENING COMMENTS OF
COX CALIFORNIA TELCOM LLC (U-5684-C)
ON PROPOSED DECISION OF PRESIDENT PEEVEY**

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I. INTRODUCTION

Cox California Telcom, LLC (U-5684-C) (hereinafter “Cox”) hereby submits its opening comments on the proposed decision of President Peevey (the “PD”), mailed on December 11, 2006. These comments are timely filed in accordance with the Commission’s Rules of Practice and Procedure and the ALJ Ruling of December 20, 2006 granting an extension of the filing date to January 9, 2007.

This PD is the result of a long-running process whereby the Commission has attempted to clarify and combine a complex set of rules relating to tariff filings. The PD makes clear that industry-specific rules for telecommunications carriers will follow in the future. However, it nevertheless includes a set of “general rules” that plainly apply to all carriers, including telecommunications carriers. Unfortunately, the general rules are, in a number of cases, inconsistent with or incompatible with other existing rules or with the recent URF decision (D. 06-08-030). This is so despite the indication in the PD that it is intended to be consistent with that decision.

Cox offers these comments, pointing out specific issues that it believes should be addressed with respect to the PD, in an effort to make certain that telecommunications carriers are treated properly under this new set of rules. It does so in order to assist the Commission with the establishment of a coherent, cohesive structure for the advice letter process.

II. DISCUSSION

A. **Telecommunications Carriers Should Be Excluded From the New “General Rules” Because Advice Letters for Telecommunications Carriers Will Be Fully Addressed in the URF Proceeding**

Cox’s first, and most fundamental, concern about the PD is its application of a new set of “General Rules” regarding advice letter filings to all carriers, including telecommunications carriers. This does not seem appropriate in light of the ongoing URF proceeding, in which the Commission recently issued a decision (D. 06-08-030) that substantially reduced restrictions on advice letters and in which the Commission is now evaluating the detariffing of all telecommunications services except basic exchange service. Since the URF proceeding is the proper forum for addressing all advice letter issues for telecommunications carriers, this proceeding should not result in new (and potentially conflicting) advice letter rules for telecommunications carriers.

In the URF Phase 1 decision, the Commission addressed tariffing restrictions for telecommunications carriers, saying there was no point “in maintaining an outmoded tariffing procedure that requires the burdensome regulatory review of cost data and delays the provision of services (particularly new or less expensive ones) to customers.” As a result, it specified that all advice letters for telecommunications carriers would be effective on one day notice. Most importantly, the decision set in motion a process to consider the detariffing of all telecommunications services other than basic exchange services.¹ That analysis will be part of Phase 2 of the URF proceeding.

¹ D. 06-08-030, pp. 178-182.

This process is likely to obviate the need for a broad application to telecommunications carriers of GO 96-B and its “general rules.” Indeed, the Commission has already received comments on the detariffing issue and will address those comments in an upcoming decision as part of URF Phase 2. If there are to be new rules for tariffs and advice letters for telecommunications carriers, that is where they should be established, not generically in this proceeding as part of the adoption of “general rules.”²

Accordingly, it would make the most sense here to exclude telecommunications carriers from the “General Rules” of GO 96-B.

B. Specific Concerns with the PD

If the Commission decides to move forward with including telecommunications carriers in the “General Rules” of GO 96-B, then there are a number of specific concerns with the PD that need to be resolved. They are set forth, below, with specific proposed modifications.

- a) General Rule ("GR") 1.1: This rule includes language providing that specific Industry Rules can differ from each other, so long as the differences are consistent with the general rules. Thus, even if Telecom Industry Rules when issued conform to URF (which they may not), this provision would make such rules null and void b/c they would conflict with the general rules. Such a result would be unintended and would likely lead to substantial confusion about which rules apply.

² Such rules could be added to GO 96-B, as appropriate, as part of an URF Phase 2 order.

- b) GR 5.4: Subsection 4 should be revised so that it is clear that it only applies to rate-regulated utilities. Although it says "where applicable," one could read this to apply to any advice letter that makes a change that has an impact on rates and charges, even where the Commission does not regulate the rates involved. This is particularly important in light of the URF decision and prior decisions holding that CLECs are not rate-regulated.
- c) GR 5.5: Subsection (4) refers to new "noncompetitive services." Such a term is not applicable to telecommunications carriers under the URF decision, so this should be made clear by excluding telecommunications carriers from the requirement of this subsection.
- d) GR 5.5: In subsection (5), the rule should provide that a utility may submit a redacted version of the contract for public view and an unredacted version that will be kept confidential by the Commission.
- e) GR 5.5: Again, in subsection (6), the language should be revised only to apply to rate-regulated utilities. This provision should not apply to telecommunications carriers whose rates are not regulated.
- f) GR 7.3.3 and 7.3.4: These two rules are not consistent with each other. The first allows a utility to file an advice letter that is "effective pending disposition," and can be "made effective on the date of filing." But the second provides that if an advice letter is submitted for "disposition," it will only be effective on a minimum of 30 days notice, and perhaps longer under certain circumstance. In essence, GR 7.3.4, as drafted, swallows up the entire concept of "effective pending disposition." Thus, GR 7.3.4 should be amended to provide that it only applies to those filings where the status of "effective pending disposition" is not sought by the utility.

- g) GR 7.3.5: This rule has the same problem as GR 7.3.4, in that it overrules the concept of “effective pending disposition” that is permitted by GR 7.3.3. It should be modified in the same way as GR 7.3.4, by providing that it only applies to those filings where the status of “effective pending disposition” is not sought by the utility.
- h) (i) GR 7.5.2: This rule creates unreasonably long periods for suspension of an advice letter, allowing the suspension to run as long as 330 days beyond the filing date. This creates great uncertainty and directly conflicts with the URF decision, which was designed to establish a system of competitive business operations that can be destroyed by this rule. Under this rule, a carrier could have a tariff in place for almost a year and then have to undo its effect. This is an unreasonable method of making carriers operate.
- i) GR 8.1.2: This requires utilities to file tariffs within five business days of Commission approval. This could leave the carrier in a difficult position, given the potential for a 330-day approval process under which it will never know when the Commission approval will be forthcoming. It would be more reasonable to require that the posting occur within thirty days of Commission approval if the approval goes beyond the initial 30-day review period.
- j) GR 8.2.3: This rule prohibits telecommunications carriers from providing service to government agencies on an off-tariff basis, except in the case of emergencies, but allows all other utilities to do so at any time. Such a distinction is not reasonable, particularly in the face of the competitive environment defined by the URF decision. Moreover, telecommunications carriers are permitted today to offer ICB service to government agencies.
- k) GR 8.5.8: This rule requires the submission of sample forms with the tariff. Again, this is not consistent with the URF decision, which established a competitive process that does not require this type of

Commission oversight of telecommunications carriers.

Telecommunications carriers should be excluded from this rule.

- l) GR 9.0 et al.: These rules on confidentiality address matters that are already addressed in statutes (PU Code § 583) and Commission orders (GO GO 66-C). There is no reason why they should repeat rules that are already in effect, and there certainly is no reason why they should include rules that differ from existing Commission policy and existing law on the confidentiality of material submitted to the Commission. The entire Rule 9.0 should be deleted.

III. CONCLUSION

The new “general rules” proposed for GO 96-B should exclude telecommunications carriers. All tariffing issues for telecommunications carriers are being addressed in the URF proceeding, either in D. 06-08-030 or in Phase 2 of that proceeding. Application of the new “general rules” under consideration here to those carriers would be duplicative and would have the potential to cause conflicts.

If the “general rules” are nonetheless applied to telecommunications carriers, then Cox recommends that they be modified as described above in order to establish a cohesive, accurate set of rules for the telecommunications industry.

Dated: January 9, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for which an electronic mail address has been provided, this day served a true copy of the original attached **OPENING COMMENTS OF COX CALIFORNIA TELCOM, LLC (U-5684-C) ON PROPOSED DECISION OF PRESIDENT PEEVEY** on all parties of record in this proceeding or their attorneys of record.

Dated: January 9, 2007 at Lafayette, California.



Joseph S. Faber

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Proceeding: R. 98-07-038

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